

MINORITY VIEWS

Based on the facts developed during the Committee's inquiry into the matter of the shipment of Iranian arms into Bosnia, we believe that the following conclusions are inescapable: (1) the United States government undertook no covert action to ship weapons to Bosnia or Croatia; (2) No U.S. official directed, controlled or facilitated the shipment of Iranian arms to Bosnia or Croatia; (3) No U.S. official violated U.S. law relating to covert action, intelligence activities, or notifications to Congress; (4) No discrepancies justifying a criminal investigation exist in the testimony of the witnesses who appeared before the Committee; and (5) Nothing in the Committee's inquiry contradicts the findings of the 1995 and 1996 investigations of the President's Intelligence Oversight Board.

The focus of this investigation was on those aspects of the transfer of arms to Bosnia which fall within the Committee's responsibilities to conduct oversight of the intelligence activities of the United States Government. We note that six current members of the Committee, three Democrats and three Republicans, were not members of the Committee during the 104th Congress when all hearings pursuant to this investigation were conducted. The Committee was particularly concerned whether a covert action was conducted without the proper presidential finding and notification to Congress. We note that the Majority has not concluded that such a covert action took place. The Majority appropriately does not argue that the relaying of the "no instructions" message by Ambassadors Galbraith and Redman to the Government of Croatia, on April 28 and 29, 1994, was a covert action. The Majority does not find a covert action in the discussions surrounding the so-called "Holbrooke initiative." The Majority does not find that any law was broken in the failure to inform Congress of the "no instructions" diplomatic exchange. We agree with these results: the Majority's report would have been much improved if these implicit judgments had been given more emphasis.

We can not, however, endorse the Majority's report. It contains numerous errors of fact and interpretation. In the section on Congressional Notification, for instance, the Majority asserts that "the U.S. had advised the Croatian Government that it would not object to * * * arms shipments." this is simply inaccurate. U.S. government officials did not so advise; U.S. government officials advised they had no instructions on the question of arms shipments. Furthermore, the report throughout confuses the isolated policy decision that led to the "no instructions" response with the entire U.S. government policy toward the crisis in the former Yugoslavia. Finally, the report levels repeated attacks on Ambassador Galbraith which are unsubstantiated by facts and therefore unfair. The following amplifies our major concerns.

NO COVERT ACTION OCCURRED

As noted, the main purpose of the Committee's investigation was to determine whether a covert action occurred. The Majority states it "cannot conclude that any U.S. official crossed the line into covert action" based on available evidence. Nevertheless, the Majority claims "questions remain" concerning whether any U.S. official "actively directed or facilitated a weapons shipment into Bosnia in September 1995." However, these supposed "questions" are not based on any evidence. The Majority's report does not point to any specific actions which, had they occurred, would constitute a covert action under a proper interpretation of the law.

A "covert action" is defined in statute (50 U.S.C. 413b) as "an activity or activities of the United States Government to influence political, economic, or military conditions abroad, where it is intended that the role of the United States will not be apparent or acknowledged publicly." The law, however, makes express exceptions for traditional diplomatic activities, routine support to diplomatic activities, activities intended primarily to acquire intelligence, and certain other specific activities.

The Majority is most concerned over whether any U.S. official, in particular former Ambassador to Croatia Peter Galbraith, "facilitated" or "directed" a particular shipment of weapons bound for Bosnia in September 1995 and whether that action constituted an "unauthorized" covert action. The fact of the matter is that the Committee received no firsthand testimony that any U.S. official (including Ambassador Galbraith) "facilitated," "directed," or "pressured" anyone with respect to the release of the weapons held by the Croats in September 1995.

Ambassador Galbraith explicitly denied under oath to the Committee that he urged that the weapons be released to the Bosnians. The U.S. government had good reason not to want the weapons released. The Majority attempts to impeach the Ambassador's testimony with reference to "allegations to the contrary." These allegations are derived from (1) a cable written by an intelligence community representative (ICR) in September 1995 who reported that he was told by one Croatian government official that the release of these weapons was "coordinated" with the U.S. Government (no names provided); and (2) the same ICR's testimony to another committee of the Congress that shortly before his Congressional testimony, and after the issue was widely reported in the press, he had been informed by a second Croatian government official that Ambassador Galbraith had "pressured" the Croats into releasing this weapons shipment.

The ICR's contemporaneous cable of September 1995 does not imply there was facilitation, direction, or pressure, and does not mention the Ambassador. The later "allocation" reported by the ICR in his testimony before the Congress should be deeply suspicious both for its timing and its source. The New York Times has reported that certain members of the Croatian government despised the Ambassador for this championing of human rights. It is not beyond the realm of possibility that this second Croatian government official intended to harm the Ambassador through the ICR's testimony.

Furthermore, there are no "stark discrepancies in testimony" as the Majority report asserts. The ICR himself testified before the Permanent Select Committee on Intelligence that he knew of no U.S. involvement in the delivery of these weapons. The weight given these "allocations" by the Majority is misplaced. There is no other "evidence" before the Committee on this question. We accept the explicit denial of the Ambassador.

The Majority states that this particular weapons shipment is of "great concern" to the Committee for several reasons, first among them because it was not part of the investigation conducted by the Intelligence Oversight Board which was completed in 1995. Our conclusion that no covert action occurred with respect to the September 1995 weapons shipment is consistent with the findings of the investigation completed by the President's Intelligence Oversight Board (IOB) in 1996. We have been informed that the IOB did not find that any U.S. officials conducted a covert action with respect to these weapons.

A second issue relating to covert actions is raised by the Majority's report. The Majority argues that had the ICR communicated U.S. policy to a foreign official, and the foreign official took action, the ICR's organization "could have been reasonably accused of covert influencing—without a Presidential finding—the 'political, economic or military' conditions in the region." However, the definition of covert action, as previously stated, applies to an activity or activities where the role of the U.S. government is not apparent or acknowledged publicly. If the ICR acting as a U.S. official had conveyed U.S. views to a foreign official on the question of whether the Croats should be involved in the transit of arms to Bosnia, the ICR's organization could not have been accused of conducting a covert action under a correct reading of the law. A statement of U.S. views by a U.S. official to a foreign official is not a covert action—it is traditional diplomacy, an activity explicitly excepted from the definition of covert action. While we agree with the Majority that ICRs should contact their headquarters whenever they are asked to do anything that appears illegal or improper, we believe they should be given proper guidance in return. In this case, neither the law on covert action nor U.S. policy was accurately explained to the ICR by his organization in the spring of 1994. The conveying of a message by an ICR to officials in a foreign government is one option available to the President in the conduct of foreign policy. It is not in and of itself a covert action.

KEEPING CONGRESS AND CIA INFORMED

The Majority argues that Congress and the CIA were not fully and adequately informed by the Clinton Administration that after April 1994 the United States was ignoring "violations of the U.N. arms embargo with respect to arms shipments to Bosnia." But the fact that the United States Government was taking no action to block arms going to Bosnia was precisely what was known to anyone following the issues in the Balkans—even to Washington Post readers who never received an intelligence briefing. No U.S. action to enforce the embargo on Bosnia was something that many in Congress advocated, and effectively became law with the enactment of the Nunn-Mitchell amendment in November 1994. It might

have made good sense for the Administration to have notified appropriate members of the Congress of the diplomatic exchange between the U.S. ambassadors and the Government of Croatia, but no notification was required by law.

The CIA, on the other hand, was informed of the diplomatic exchange. The Majority tries to make the case that the CIA was "left in the dark," was "out of the loop," and "stonewalled," but the facts do not bear this out. CIA personnel, at the highest level and in the field, were told more than once about the "no instructions" instruction. The intelligence community had advance notice the Croatian government was preparing to allow the transshipment of arms to Bosnia and was seeking U.S. views on the issue. Ambassador Galbraith's cable of April 29, 1994, asking for more explicit guidance on his instructions was received and read at CIA headquarters. Deputy Secretary of State Strobe Talbott at the May 5, 1994 meeting with former Director of Central Intelligence R. James Woolsey made clear the Ambassador was authorized by Washington to say he had "no instructions." (Unfortunately, the CIA's message to the field concerning the meeting was garbled and mishandled.) The former chief of the Central Eurasian Division told Committee staff that after the Woolsey-Talbott May 5, 1994, meeting, senior officials at CIA understood the implications of the "no instructions" instruction with respect to the shipment of arms from Iran. He explained that they did not like the diplomatic response to the Croatian government, precisely because they believed they understood the implications of the policy.

While the Majority report makes much of former DCI Woolsey's testimony that he was not aware a policy decision had been made, he did testify it because clear to CIA that the United States government was not objecting to arms shipments to the Bosnians and was not taking action to stop them. He further testified he never expressed dissatisfaction to Deputy Secretary Talbott over what he had been told at their meeting. The Majority report confuses the concerns of Mr. Woolsey in May 1994 with the concerns he had in October 1994. Mr. Woolsey did not testify that his October 5, 1994, meeting with Anthony Lake, the Assistant to the President for National Security Affairs, was "the first time he was officially told that 'no instructions' was the standing policy and that the U.S. would look the other way as Iranian weapons flowed to the Bosnians." Instead he testified that he and Mr. Lake discussed the status and legal implications of the so-called Holbrooke initiative and other proposals under consideration at the time (never undertaken) for providing arms to the Bosnian Muslims.

The intelligence community representative in the field was told by a State Department official that the "no instructions" response was an officially authorized response to the Government of Croatia. He chose not to believe what he was told. This appears to be in large measure a result of the inaccurate and uncoordinated guidance he received from his organization. This poor guidance led the ICR to collect information from the deputy chief of mission on the activities and statements of the Ambassador and other U.S. officials, and send the information back to his headquarters. The ICR was a relatively inexperienced officer assigned to a region in the midst of war and humanitarian crisis. He testified that during this

period he was "seeking guidance" on whether he should change his mission priorities. His concerns did not receive the attention they deserved from his headquarters. Senior personnel at his organization should have better supported him in resolving his concerns and addressing the suspicion and mistrust that was present in the field.

MAJORITY ATTACK ON AMBASSADOR IS UNJUSTIFIED

The Majority claims that it is "concerned" Ambassador Galbraith may have "provided the Committee inaccurate information" on: (1) whether he "kept a written record;" (2) how often he met with a Croatian Muslim leader who "has suspected ties to Iranian intelligence;" and (3) how many rockets were in a certain shipment of arms to the Bosnians. This section of the report is baffling. The Majority is criticizing the Ambassador for the allegedly inaccurate answers he gave to questions he was never asked. Furthermore, the Majority is trying to impeach the testimony of the Ambassador by using the statements of a witness who has never appeared before the Committee and who has in other settings given three different accounts of a key point. The Majority's attack on the Ambassador's testimony is unjustified.¹

With respect to the information Ambassador Galbraith provided to the Committee concerning whether he kept a written record, Ambassador Galbraith was never asked at the Committee hearing whether he kept a diary or journal or made notes while serving as Ambassador. He was never asked about documents in general he might have written concerning Bosnia and Croatia. As the Majority report concede, if the Ambassador had disclosed to the Committee that he kept "his own 'record' of events that, at least in part, was relevant to the Committee's inquiry," he would have had to volunteer that in information.

Ambassador Galbraith was asked at the Committee's hearing whether he made a record of the events surrounding receipt of the "no instructions" instruction. The Ambassador testified (as the Majority acknowledges) that he made a memorandum for the record on May 6, 1994 on the discussions leading up to his receipt of the "no instructions" instructions and his implementation of those instructions.

Ambassador Galbraith did keep notes on his diplomatic contacts which were dictated to his secretary for a limited period of time from approximately the fall of 1994 to November 1995. Excerpts from this so-called "record" pertaining to the Committee's investigation were appropriately made available to the Committee by the Department of State in response to the Committee's request for written materials relevant to the full scope of the Committee's inquiry. The excerpts provided to the Committee show the Ambassador dealing with the implications of the so-called "Holbrooke ini-

¹The Majority states the Justice Department is conducting a criminal inquiry concerning the accuracy and truthfulness of the Ambassador's testimony. This inquiry is based on a referral from the Majority members of the Select Subcommittee to Investigate the United States Role in Iranian Arms Transfers to Croatia and Bosnia (the "Select Subcommittee"). The referral, made in November 1996, requested that the Justice Department review the actions and testimony of 8 executive branch officials and one former senator for violations of law on a variety of theories. More than a year later, no criminal proceedings have been initiated by the Justice Department based on this referral.

tiative" and accurately conveying U.S. policy neither to oppose nor support third-party arms transfers to Bosnia-Herzegovina. Again, the Ambassador did not mislead or provide inaccurate information to the Committee concerning this material because the Ambassador was never asked about it.

The Majority appears to be attacking the Ambassador's veracity on when the "record" was initiated and what it contained. Again, the Ambassador was never questioned on this subject by the Committee and neither was Ronald Neitzke, the deputy chief of mission to Croatia, when he appeared before the Committee. The Majority report claims Mr. Neitzke and Charlotte Stottman, Ambassador Galbraith's secretary in 1993 and 1994, have said the "record" began in 1993 but there is no record testimony of Mr. Neitzke on this question before the Select Subcommittee and Ms. Stottman, as discussed in the next section, is an unreliable witness. Furthermore, the fact that no excerpt exists which addresses the release of weapons by the Croats in autumn 1995 supports the Ambassador's testimony that he did not urge that they be released. Contrary to the Majority's strange statement that the Committee is "constrained to rely on Ambassador Galbraith's testimony to the Select Subcommittee" concerning those portions of the "record" not provided to the Committee, the entire "record" was made available to the chief counsels of the Select Subcommittee.

The Majority's second issue concerning allegedly misleading testimony is equally flimsy. The Majority asserts "[t]estimony obtained about Ambassador Galbraith's dealings and relationship with a leading Croatian Muslim cleric raises questions about the truthfulness and completeness of the Ambassador's testimony to the Committee on this subject." Again, to make this charge, the Majority twists the Ambassador's testimony and relies on testimony not given before the Intelligence Committee.

Ambassador Galbraith was asked in his appearance before the Intelligence Committee whether he was the U.S. official identified as having met with a certain Croatian cleric during a particular time period with relevance to a specific document. Ambassador Galbraith testified, "I believe that I was the U.S. official identified." He further testified:

As ambassador I made a series of courtesy calls * * * [with] religious leaders * * * in the context in which I met [him] I am not even sure I would have known he was in that room. *I did not ask him to buy arms for the Bosnian Muslims* * * * that, frankly, is the only time I recall meeting [the cleric]. (Emphasis added.)

Ambassador Galbraith was not definitive in his testimony to this Committee concerning the number of times he met with this cleric. He was emphatic, however, that he did not ask the cleric to buy arms. The Majority has no evidence to contradict the Ambassador's assertion that he did not ask the cleric to purchase arms. Furthermore, there was no testimony obtained in hearings before the Intelligence Committee concerning the Ambassador's "dealings" with the cleric as the Majority implies. The Majority is relying on testimony taken by the Select Subcommittee on the narrow question of whether one or more meetings between the Ambassador and cleric

took place. The Ambassador's former secretary, Charlotte Stottman, testified the Ambassador met the cleric more than once in his office. However, if testimony has been given elsewhere, the Committee has little basis for judging the testimony reliable or credible. Indeed, as the Majority notes, Charlotte Stottman disavowed her testimony. She contacted the chairman and ranking member of the Select Subcommittee by letter to explain that when she was questioned by the Select Subcommittee about the cleric she mistook his name for that of a torture victim under threat of execution whose release Ambassador Galbraith had secured. The Majority is aware of Ms. Stottman's letter, but indicates Ms. Stottman has since changed her story again, apparently in a telephone conversation with the Committee's chief counsel. Ms. Stottman's testimony is not reliable and should not serve as the basis for insinuations that the Ambassador had a "relationship" and "dealings" with the cleric. Perhaps the Majority should be concerned Ms. Stottman has provided inaccurate information, not the Ambassador.

Finally, it is unbelievable that the Majority dwells on a discrepancy in the testimony of the witnesses concerning the number of weapons in an arms shipment to the Bosnians. Ambassador Galbraith never claimed to have seen the weapons shipment, and would therefore not have first-hand knowledge of the number of weapons it contained. It is clear from the testimony that his point was simply that one weapon in the shipment might not have gone on to Bosnia. Indeed, experts on the war believe Croats received a percentage of every weapons shipment that transited the country and the ICR testified before the Committee that one weapon was initially held back. The Majority report speculates the Ambassador might have been trying to "divert attention from the question of why Croatia released this shipment to the Bosnians." The idea that anyone would purposefully provide inaccurate information on a minor, easily verified point to divert the attention of a congressional committee strains credulity. The Majority report goes beyond common sense in its attempt to assemble derogatory information.

STATE/CIA RELATIONS

The Majority should have made a good faith effort in this investigation to weigh the views and perspectives of officials from across the U.S. government. Instead, the report twists and distorts the testimony of witnesses from the Department of State and ignores the implications of significant information from officials of the Department of Defense concerning the Ambassador's appropriate responsiveness to issues of concern to the Department. It is extraordinary for a committee of Congress to charge a U.S. Ambassador with taking actions that "seriously and dangerously limited the effectiveness of intelligence collection"—it is shameful for this Committee to have done so with no bill of particulars, and no opportunity for the Ambassador or the Department of State to respond.

In its 1997 report on Guatemala, the Committee endorsed the "primary of the ambassador at post" under the law. In this investigation, however, the Majority never analyzes whether any actions allegedly taken by the Ambassador exceeded his legitimate statutory authorities as a chief of mission or whether those actions had

any discernible effect on the intelligence collection effort in the region. The case has simply not been made that the effectiveness of intelligence was "seriously and dangerously" limited, and the accusation of vindictiveness is ironic at best.

Furthermore, although the Majority asserts "relations between the Ambassador and the ICR deteriorated to a dangerously unhealthy level," the ICR testified to the Committee in June 1996: "I never had a sense of personal animosity from the Ambassador, and I don't feel it towards the Ambassador, nor did I feel it at the time." Both defense attachés who served under Ambassador Galbraith, Lt. Col. Richard Herrick and Lt. Col. John Salder, whose responsibilities included overt intelligence activities, assured Committee staff that they and the Department of Defense found the Ambassador to be extremely responsive to U.S. defense needs and utterly appropriate in his working relationship with them and the Department. Indeed, one said he "thank[ed] his lucky star" for the opportunity to work with the Ambassador. The first key finding of the July 1997 Report of Inspection of Embassy Zagreb, Croatia, by the Inspector General of the Department of State was that "Embassy Zagreb, led by an exceptionally activist, innovative and articulate Ambassador, has produced an impressive string of policy achievements over the past few years. These have directly contributed to peace and saved lives."

In order to represent U.S. interests most effectively, an ambassador or chief of mission should have close working relationships with officials of all government agencies serving in-country, including those representing the intelligence community. Close working relationships are built on professionalism, competency, and trust. Trust can be eroded when officials from one agency of the government traffic in unsubstantiated information concerning co-workers or superiors from other agencies. Trust can also be eroded when officials of one agency place in jeopardy the operational equities of another entity and will not acknowledge mistakes were made.

In this case, cables of an intelligence community representative contained unproven speculation about an ambassador, unfortunate characterizations of a deputy chief of mission, and second-hand information about the actions and views of other U.S. officials. These cables were not informal e-mail: they are official U.S. government records, permanently held by the ICR's organization. The cables were criticized at least four times within the ICR's own organization at the time they were sent, but the Majority finds that an ICR providing "atmospherics" and "background information" to a "select group of people" in private-channel cables has "obvious utility." We have the time of ICRs could be better utilized collecting foreign intelligence.

The Majority uses the testimony of former DCI Woolsey to buttress its position that the ICR's cables were appropriate. However, Mr. Woolsey's comments as rendered by the Majority are inconsistent on the function and purpose of these kinds of cables. Equally important, Mr. Woolsey testified he had not read all the cables. Furthermore, according to a memorandum for the record prepared by the ICR following the November 1994 meeting referred to by the Majority, it was Mr. Woolsey and his executive assistant who first cautioned the ICR against spying on the State Department.

In short, Ambassador Galbraith's concerns about this kind of reporting were legitimate institutional concerns and should have received more balanced treatment in the Majority report. We completely agree with the Majority that there should be a common understanding of the 1997 memorandum of understanding between the State Department and the intelligence community and stress that the guidance on reporting from the field reiterated in 1996 should be strictly enforced.

Furthermore, Ambassador Galbraith during his tenure also raised legitimate institutional issues about country clearances and the host-country contacts of U.S. government officials. State Department officials and officials of one intelligence agency, in particular, overseas should present a united front to the world and work together to ensure U.S. national security and foreign policy goals are met. Again, we strongly agree with the Majority that building better, more professional relationships overseas is in the best interests of the entire U.S. government, we emphasize, however, that this requires cooperation from all concerned.

Finally, if nothing else, the Committee should have looked at how legal advice is provided to intelligence community representatives and whether requests for guidance on policy and mission priorities are handled in a timely manner with proper coordination.

THE INTELLIGENCE OVERSIGHT BOARD

We want to express our appreciation for the work done by the members of the President's Intelligence Oversight Board (IOB). The IOB, comprised of highly respected, private citizens who have had distinguished careers in intelligence, national security, business and the law, performs an important and valuable service to the United States. The members serve as a fact-finding body for the President on intelligence issues involving multiple departments and jurisdictions of the Executive Branch. They investigate with all the powers and authority of the Office of the President and are required by executive order to report to the Attorney General any information concerning intelligence activities that they believe to be unlawful. The IOB did not make such a referral in this case.

The oversight function of the IOB worked as it was supposed to in this case. The IOB and the congressional intelligence committees serve different purposes and functions. One cannot substitute for, or replace, the other. We believe the Chairman of the IOB, Anthony Harrington, went out of his way to ensure the Committee understood the careful investigation he led on this matter and we are grateful for his efforts and those of the Board's members and staff.

NORM DICKS.
JULIAN C. DIXON.
DAVID SKAGGS.
NANCY PELOSI.
JANE HARMAN.
IKE SKELTON,

*[Except for the sixteenth
through twenty-third para-
graphs].*

SANFORD D. BISHOP, JR.